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(a) *Arbitrator* means a single person appointed to arbitrate pursuant to these rules.

(b) *Arbitrator Panel* means a group of three people appointed to arbitrate pursuant to these rules. One panel member would be selected by each side to the arbitration dispute, and the parties would mutually agree to the selection of the third-neutral arbitrator under the “strike” methodology described in § 1108.6(c).

(c) *Arbitration program* means the program established by the Surface Transportation Board in this part under which participating parties, including rail carriers and shippers, have agreed voluntarily in advance, or on a case-by-case basis to resolve disputes about arbitration-program-eligible matters brought before the Board using the Board’s arbitration procedures.

(d) *Arbitration-program-eligible matters* are those disputes or components of disputes, that may be resolved using the Board’s arbitration program and include disputes involving one or more of the following subjects: Demurrage; accessorial charges; misrouting or mishandling of rail cars; and disputes involving a carrier’s published rules and practices as applied to particular rail transportation.

(e) *Counterclaim* is an independent arbitration claim filed by a respondent against a complainant arising out of the same set of circumstances or is substantially related to the underlying arbitration complaint and subject to the Board’s jurisdiction.

(f) *Final arbitration decision* is the unredacted decision served upon the parties 30 days after the close of the arbitration’s evidentiary phase.

(g) *Interstate Commerce Act* means the Interstate Commerce Act as amended by the ICC Termination Act of 1995.

(h) *Monetary award cap* means a limit on awardable damages of \$200,000 per case, unless the parties mutually agree to a different award cap. If parties bring one or more counterclaims, such counterclaims will be subject to a separate monetary award cap of \$200,000 per case, unless the parties mutually agree to a different award cap.

(i) *Neutral Arbitrator* means the arbitrator selected by the strike methodology outlined in § 1108.6(c).

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(j) *Statutory jurisdiction* means the jurisdiction conferred on the STB by the Interstate Commerce Act, including jurisdiction over rail transportation or services that have been exempted from regulation.

(k) *STB* or *Board* means the Surface Transportation Board.

§ 1108.2 Statement of purpose, organization, and jurisdiction.

(a) *The Board’s intent.* The Board favors the resolution of disputes through the use of mediation and arbitration procedures, in lieu of formal Board proceedings, whenever possible. This section provides for the creation of a binding, voluntary arbitration program in which parties, including shippers and railroads, agree in advance to arbitrate certain types of disputes with a limit on potential liability of \$200,000 unless the parties mutually agree to a different award cap. The Board’s arbitration program is open to all parties eligible to bring or defend disputes before the Board.

(1) Except as discussed in paragraph (b) of this section, parties to arbitration may agree by mutual written consent to arbitrate additional matters and to a different amount of potential liability than the monetary award cap identified in this section.

(2) Nothing in these rules shall be construed in a manner to prevent parties from independently seeking or utilizing private arbitration services to resolve any disputes they may have.

(b) *Limitations to the Board’s Arbitration Program.* These procedures shall not be available for disputes involving labor protective conditions, which have their own procedures. These procedures shall not be available to obtain the grant, denial, stay or revocation of any license, authorization (e.g., construction, abandonment, purchase, trackage rights, merger, pooling), or exemption related to such matters. Parties may only use these arbitration procedures to arbitrate matters within the statutory jurisdiction of the Board.

§ 1108.3 Participation in the Board’s arbitration program.

(a) *Opt-in procedures.* Any rail carrier, shipper, or other party eligible to bring or defend disputes before the Board

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may at any time voluntarily choose to opt into the Board's arbitration program. Opting in may be for a particular dispute or for all potential disputes before the Board unless and until the party exercises the opt-out procedures discussed in § 1108.3(b). To opt in parties may either:

(1) File a notice with the Board, under Docket No. EP 699, advising the Board of the party's intent to participate in the arbitration program. Such notice may be filed at any time and shall be effective upon receipt by the Board.

(i) Notices filed with the Board shall state which arbitration-program-eligible issue(s) the party is willing to submit to arbitration.

(ii) Notices may, at the submitting party's discretion, provide for a different monetary award cap.

(2) Participants to a proceeding, where one or both parties have not opted into the arbitration program, may by joint notice agree to submit an issue in dispute to the Board's arbitration program.

(i) The joint notice must clearly state the issue(s) which the parties are willing to submit to arbitration and the corresponding maximum monetary award cap if the parties desire to arbitrate for a different amount than the Board's \$200,000 monetary award cap.

(b) *Opt-out procedures.* Any party who has elected to participate in the arbitration program may file a notice at any time under Docket No. EP 699, informing the Board of the party's decision to opt out of the program or amend the scope of its participation. The notice shall take effect 90 days after filing and shall not excuse the filing party from arbitration proceedings that are ongoing, or permit it to withdraw its consent to participate in any arbitration-program-eligible dispute associated with their opt-in notice for any matter before the Board at any time within that 90 day period before the opt-out notice takes effect

(c) *Public notice of arbitration program participation.* The Board shall maintain a list of participants who have opted into the arbitration program on its Web site at www.stb.dot.gov. Those parties participating in arbitration on a

case-by-case basis will not be listed on the Board's Web site.

§ 1108.4 Use of arbitration.

(a) *Arbitration-program-eligible matters.* Matters eligible for arbitration under the Board's program are: Demurrage; accessorial charges; misrouting or mishandling of rail cars; and disputes involving a carrier's published rules and practices as applied to particular rail transportation. Parties may agree in writing to arbitrate additional matters on a case-by-case basis as provided in paragraph (e) of this section.

(b) *Monetary award cap.* Arbitration claims may not exceed the arbitration program award cap of \$200,000 per arbitral proceeding unless:

(1) The defending party's opt-in notice provides for a different monetary cap or;

(2) The parties agree to select a different award cap that will govern their arbitration proceeding. The parties may change the award cap by incorporating an appropriate provision in their agreement to arbitrate.

(3) Counterclaims will not offset against the monetary award cap of the initiating claim. A counterclaim is an independent claim and is subject to a monetary award cap of \$200,000 per case, separate from the initiating claim, or to a different cap agreed upon by the parties in accordance with § 1108.4(b)(2).

(c) *Assignment of arbitration-program-eligible matters.* The Board shall assign to arbitration all arbitration-program-eligible disputes arising in a docketed proceeding where all parties to the proceeding are participants in the Board's arbitration program, or where one or more parties to the matter are participants in the Board's arbitration program, and all other parties to the proceeding request or consent to arbitration.

(d) *Matters partially arbitration-program-eligible.* Where the issues in a proceeding before the Board relate in part to arbitration-program-eligible matters, only those parts of the dispute related to arbitration-program-eligible matters may be arbitrated pursuant to the arbitration program, unless the